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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION**

20 THE WIMBLEDON FUND, SPC (CLASS  
21 TT),

22 Plaintiff,  
23  
24 C.D. Cal. Case No. 2:15-cv-6633-  
25 CAS-AJWx

26 vs.

27 GRAYBOX LLC; INTEGRATED  
28 ADMINISTRATION; EUGENE SCHER,  
AS TRUSTEE OF BERGSTEIN TRUST;  
and CASCADE TECHNOLOGIES CORP.,

Defendants.

**OPPOSITION TO MOTIONS TO  
DISMISS FILED BY GRAYBOX,  
LLC, EUGENE SCHER, AS  
TRUSTEE OF BERGSTEIN  
TRUST, AND CASCADE  
TECHNOLOGIES CORP. [DOC.  
NO. 71] AND BY INTEGRATED  
ADMINISTRATION [DOC. NO.  
72]; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF**

Hearing:

Date: November 23, 2015

Time: 10:00 a.m.

Location: Crtrm 5, Second Floor

312 N. Spring Street  
Los Angeles, CA 90012-4701

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff, The Wimbledon Fund, SPC (Class TT) (the “Fund” or “Plaintiff”) files this Opposition to the Motions to Dismiss (Doc. Nos. 71, 72) (collectively, the “Motions”) filed by Graybox, LLC (“Graybox”), Eugene Scher, as Trustee of Bergstein Trust (“Scher”), and Cascade Technologies Corp. (“Cascade”) and by Integrated Administration (“Integrated”) (collectively, “Defendants”).

## I. INTRODUCTION.

The Complaint sets forth specific allegations concerning the \$17.7 million fraudulent investment scheme perpetrated by a sham entity, Swartz IP Services Group Inc. (“SIP”) and, specifically, its four alter ego principals (the “Alter Egos”). The scheme victimized the Fund and directly benefited Defendants—third parties that are operated by and/or for the benefit of the Alter Egos—who received more than \$6.7 million of the Fund’s investment through a series of fraudulent transfers authorized by the Alter Egos. For each Defendant, the Complaint identifies:

- the total number of transfers received from SIP;
- the total amount of the transfers received from SIP;
- the date range (November 2011 through July 2012) within which SIP made the transfers; and
- the specific bank account (Wells Fargo or Deutsche Bank) from which SIP made the transfers.

Because the Complaint easily satisfies the applicable pleading standards for the Fund’s actual and constructive fraudulent transfer claims, the Court should summarily deny the Motions.

1       What makes the Motions particularly meritless is the fact that the Court already  
2 held, in orders (Doc. Nos. 54, 56, 70) granting the Fund’s motion for a preliminary  
3 injunction against Graybox (Doc. No. 16) (the “Injunction Motion”), that the Fund  
4 demonstrated a likelihood of success on its fraudulent transfer claims against  
5 Graybox. As Defendants are well aware, these orders were supported by voluminous  
6 evidence, including bank records showing the specific dates and amounts of distinct  
7 transfers to Defendants (not just Graybox). The bank records also supported the  
8 Court’s findings regarding the badges of fraud and SIP’s insolvency—common  
9 elements to the fraudulent transfer claims asserted against each Defendant. By virtue  
10 of the Injunction Motion and the orders granting same, Defendants had additional  
11 notice of the facts (and evidence) supporting the Fund’s claims ***before Defendants***  
12 ***filed the Motions.*** The Court is entitled to take judicial notice of these documents—  
13 public records that the Fund previously relied upon in drafting the Complaint—but  
14 need not do so because of the sufficiency of the Fund’s well-pled factual allegations.  
15

16       The Motions represent, in truth, another attempt by Defendants to further delay  
17 resolution of this case on its merits and further burden the Fund as it prepares  
18 opposition to Graybox’s pending appeal of the final order granting the Injunction  
19 Motion. Absent from the law is any authority—and Defendants cite to none—to  
20 support the severe relief Defendants seek in the Motions: ***dismissal of the Complaint***  
21 ***with prejudice.*** The Fund respectfully requests that the Court deny the Motions in  
22 their entirety.  
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1           **II. FACTUAL ALLEGATIONS IN THE COMPLAINT.**

2           The Alter Egos (David Bergstein, Jerome Swartz, Aaron Grunfeld, and Kiarash  
 3           Jam) formed SIP in December 2010 as a vehicle to perpetrate a fraudulent investment  
 4           scheme against the Fund. [Compl., ¶¶ 10-11]. SIP was, at all times, a fictitious entity,  
 5           with no legitimate operation and no assets. [Compl., ¶¶ 11-14].

6           In November 2011, the Fund and SIP entered into a purported investment  
 7           agreement (the “NPA”), pursuant to which the Fund purchased \$17.7 million of so-  
 8           called “reference notes” issued by SIP (the “SIP Notes”). [Compl., ¶¶ 15-17]. As  
 9           detailed in the Complaint, the NPA contains several provisions suggesting that SIP  
 10           was a viable business entity and that the Fund’s investment was legitimate. [Compl.,  
 11           ¶ 16].

12           Shortly after SIP received the Fund’s \$17.7 “investment” in November and  
 13           December 2011, the Alter Egos authorized a series of illicit transfers of the Fund’s  
 14           investment from SIP’s Deutsche Bank and Wells Fargo bank accounts to Defendants.  
 15           [Compl., ¶¶ 18-27]. Specifically, between November 2011 and July 2012, the Alter  
 16           Egos authorized the following transfers which were entirely inconsistent with, and  
 17           contravened, the NPA’s express terms:

- 24           • from the Deutsche Bank accounts, sixteen transfers totaling \$1.8  
 25           million to Graybox, of which David Bergstein is the sole managing  
 26           member;
- 27           • from the Deutsche Bank accounts, sixteen transfers totaling  
 28           approximately \$2 million to Integrated, an entity controlled by  
 29           David Bergstein and Kiarash Jam, who are Integrated’s majority  
 30           shareholders, officers, and/or directors;

- 1     • from the Deutsche Bank accounts, three transfers totaling \$125,000  
2         to Scher, who is the marketing director of K.Jam Media (an entity  
3         owned by Kiarash Jam and which shares a “business” address with  
4         SIP) and the trustee for a trust that owns David Bergstein’s real  
5         property throughout the country;
- 6     • from the Deutsche Bank accounts, a \$200,000 payment to Cascade,  
7         of which Jerome Swartz is a director and Scher the CEO and COO;
- 8     • from the Wells Fargo account, two transfers totaling \$300,000 to  
9         Graybox;
- 10    • from the Wells Fargo account, a \$100,000 transfer to Scher; and
- 11    • from the Wells Fargo account, six withdrawals totaling  
12         approximately \$2.2 million, which (upon information and belief)  
13         were diverted to Defendants.

14           [Compl., ¶¶ 18-27]. With respect to the Deutsche Bank accounts, nearly half of the  
15         Fund’s \$12.5 million “investment” was dissipated within just twelve days of receipt,  
16         and the accounts were entirely depleted within eight months of the “investment.”

17           [Compl., ¶ 18]. With respect to the Wells Fargo account, it had a December 2011  
18         account balance of approximately \$68,000. [Compl., ¶ 24]. The Fund’s investment of  
19         \$5.2 million was wired into that account at the beginning of that month. [Compl., ¶  
20         24].

21           SIP, which never did any legitimate business, received no value in exchange for  
22         these undisclosed transfers and was insolvent at the time it made the transfers.  
23           [Compl., ¶¶ 34, 36, 37, 46, 48, 49, 57, 59, 60, 68, 70, 71]. Defendants had full  
24         knowledge that the transfers were fraudulent. [Compl. ¶¶ 38, 50, 61, 72]. Indeed, the  
25         transfers were made solely for the Alter Egos’ direct personal benefit. [Compl. ¶¶ 34,  
26         46, 57, 68].

1 Pursuant to the NPA, between August 2012 and February 2013, the Fund made  
 2 redemption requests on SIP and declared the SIP Notes immediately due and payable.  
 3 [Compl., ¶¶ 28-29]. SIP ignored the Fund's redemption requests and the acceleration  
 4 notice. [Compl., ¶¶ 28-29]. The Texas Secretary of State ultimately forfeited SIP's  
 5 certificate of formation on February 8, 2013—the same day the Fund sued SIP for  
 6 breach of contract in New York state court. [Compl., ¶¶ 30-31]. In July 2015, the  
 7 court in New York entered an \$18,171,635 award against SIP and in favor of the  
 8 Fund. [Compl., ¶ 31].

9  
 10  
 11 On September 9, 2015, the Fund filed the Complaint asserting claims for actual  
 12 and constructive fraudulent transfers against Defendants pursuant to the California  
 13 Uniform Fraudulent Transfer Act ("CUFTA").  
 14  
 15

### 16 **III. THIS COURT SHOULD SUMMARILY DENY THE MOTIONS.**

#### 17 **A. The Complaint's Detailed Factual Allegations Satisfy the Applicable 18 Pleading Standards for the Fund's Fraudulent Transfer Claims.**

19 The Complaint sets forth detailed allegations supporting the Fund's fraudulent  
 20 transfer claims, and therefore, the Motions should be denied. As alleged in the  
 21 Complaint, the Fund seeks to avoid the subject fraudulent transfers on the basis that  
 22 they are either "actual fraudulent transfers" or, alternatively, "constructive fraudulent  
 23 transfers."<sup>1</sup> [Mot., Doc. No. 71 at 5; Mot., Doc. No. 72 at 7 (both citing Cal. Civ.  
 24  
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26 <sup>1</sup> The Injunction Motion articulates the relevant law governing actual and constructive  
 27 fraudulent transfer claims. [Inj. Mot., Doc. No. 16 at 12-15]. Defendants suggest that  
 28 the Fund was required to expressly identify the theory on which it seeks to avoid the  
 fraudulent transfers. [Mot., Doc. No. 71 at 5; Mot., Doc. No. 72 at 6-7]. The law,

1 Code § 3439.04(a)(1), (2))]. As Defendants acknowledge, claims for constructive  
 2 fraudulent transfers are not subject to the heightened pleading standard in Federal  
 3 Rule of Civil Procedure 9(b). [Mot., Doc. No. 71 at 6; Mot. Doc. No. 72 at 7 (both  
 4 stating that Rule 9(b) only applies to actual fraudulent transfer claims)]. *See Hoysung*,  
 5 2011 WL 835781 at \*6 (citation omitted) (noting that Rule 9(b) is inapplicable  
 6 because a constructive fraudulent transfer “does not ‘sound in fraud’”). Thus, to  
 7 survive the Motions, the Complaint need only “contain sufficient factual matter . . . to  
 8 ‘state a claim to relief’” for a constructive fraudulent transfer ““that is plausible on its  
 9 face.”” *See Palmdale 3D, LLC v. Calamos*, No. CV-14-7523-MWF, 2015 WL 71561,  
 10 at \*3 (C.D. Cal. Jan. 5, 2015) (quotation marks omitted).  
 11

12 A claim to avoid an actual fraudulent transfer, on the other hand, is subject to  
 13 Rule 9(b)’s heightened pleading standard. *See Kelleher v. Kelleher*, No. 13-cv-05450,  
 14 2011 WL 117805, at \*4 (N.D. Cal. Mar. 19, 2014). To satisfy that standard,  
 15 “allegations must be ‘specific enough to give defendants notice of the particular  
 16 misconduct which is alleged to constitute the fraud charged so that they can defend  
 17 against the charge and not just deny that they have done anything wrong.’” *Id.*  
 18 (quoting *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985)); *accord Hoysung*,  
 19 2011 WL 835781 at \*5. “This includes ‘the who, what, when, where, and how of the  
 20 misconduct charged.’” *Kelleher*, 2011 WL 117805 at \*4 (quoting *Ness v. Ciba-Geigy*  
 21

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22 however, contains no such requirement. Indeed, consistent with the Complaint,  
 23 “[c]laims for actual fraudulent transfer and constructive fraudulent transfer ‘may be  
 24 asserted as alternative theories of liability.’” *See Hoysung (Am.), Inc. v. Hantle USA,  
 25 Inc.*, No. C 10-02160 SBA, 2011 WL 835781, \*6 (N.D. Cal. Mar. 4, 2011).

1 *Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)). However, “[m]alice, intent,  
 2 knowledge, and other conditions of a person’s mind may be alleged generally” under  
 3 Rule 9(b). *Albergo v. Cuxhaven Holdings, Ltd.*, No. 11CV1787 DMS (MDD), 2011  
 4 WL 6300217, at \*4 (S.D. Cal. Dec. 15, 2011).

5 Importantly, actual fraudulent intent under CUFTA ““may be proven on the  
 6 basis of circumstantial evidence.”” *Id.* (quoting *In re AFI Holding, Inc.*, 525 F.3d 700,  
 7 704 (9th Cir. 2008)). The Ninth Circuit has also recognized that a ““special  
 8 relationship between the debtor and the transferee[,]”” including a family, friendship,  
 9 or close associate relationship, ““is one of the ‘more common circumstantial indicia of  
 10 fraudulent intent.”” *Id.* at \*5 (citations omitted).

11 Here, as set forth in detail above, the Complaint contains well-pled allegations  
 12 of both actual and constructive fraudulent transfers that more than sufficiently put  
 13 Defendants on notice of the wrongful conduct at issue. The Complaint does not, as  
 14 Defendants contend, simply “allege that at some point in time, [Defendants] received  
 15 unspecified transfers from SIP, at unspecified times, in mostly unspecified  
 16 amounts[,]” nor does it “bald[ly] assert[] . . . a few badges of fraud[,]” nor does it  
 17 simply make “naked assertions of the statutory prerequisites for a constructive  
 18 fraudulent transfer [without] further factual enhancement.” [Mot., Doc. No. 71 at 7, 9,  
 19 10; Mot., Doc. No. 72 at 10-11].

20 To the contrary, the Complaint includes detailed allegations regarding: (i) SIP’s  
 21 fraudulent intent, including allegations that SIP was a sham entity that was insolvent  
 22

1 at the time it made the subject transfers; (ii) the transfers were made to Defendants  
 2 who were SIP's insiders; (iii) SIP, through the Alter Egos, was in continuous  
 3 possession of the Fund's investment; and (iv) the Fund was unaware of the transfers.<sup>2</sup>  
 4  
 5 The Complaint also contains the specific time period within which Defendants  
 6 received the illicit transfers, the total number of transfers, the total amounts of the  
 7 transfers, and the identity of the transferor banks. The Complaint further alleges that  
 8 SIP did not receive reasonably equivalent value in exchange for the transfers to  
 9 Defendants. In fact, as alleged, SIP received ***no value***, failed to honor the Fund's  
 10 redemption requests, and caused the Fund's \$17.7 million investment to vanish in a  
 11 matter of several months.

12  
 13 In short, the Complaint "includes 'the who, what, when, where, and how of the  
 14 misconduct charged'" and unmistakably gives Defendants notice of the misconduct at  
 15 issue, such that Defendants can defend against the Fund's allegations. *See Kelleher*,  
 16 2011 WL 117805 at \*4. Under these circumstances, the Court should deny the  
 17 Motions.<sup>3</sup>

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 22 <sup>2</sup> *See* Cal. Civ. Code § 3439.04(a)(1); *Kelleher*, 2014 WL 1117805 at \*5 (citation  
 23 omitted) (stating that "[t]he presence of a single badge of fraud may spur mere  
 24 suspicion; the confluence of several can constitute conclusive evidence of actual intent  
 25 to defraud, absent 'significantly clear evidence of a legitimate supervening purpose'").

26  
 27 <sup>3</sup> *See, e.g., Palmdale*, 2015 WL 71561 at \*5 (denying motion to dismiss fraudulent  
 28 transfer claims where complaint "allege[d] a number of badges of fraud[,]" including  
 that the recipients of the transfers were insiders and controlling members of the  
 transferor entity); *Kelleher*, 2014 WL 1117805 at \*5 (denying motion to dismiss  
 fraudulent transfer claims where plaintiff alleged, *inter alia*, that the transfers were  
 never disclosed and that the transferee was an insider); *Hyosung*, 2011 WL 835781 at  
 \*5 (denying motion to dismiss fraudulent transfer claims where plaintiffs alleged, "in

1       In urging dismissal, Defendants make several additional unpersuasive  
 2 arguments. They first incorrectly argue that the Fund’s allegations are conclusory  
 3 because they “parrot the statutory language” in CUFTA. [Mot., Doc. No. 71 at 8, 10;  
 4 Mot., Doc. No. 72 at 10, 12]. However, the law does not prohibit the Fund from  
 5 including allegations that mirror the relevant statutory provisions underlying the  
 6 Fund’s claims. Moreover, allegations regarding the solvency and fraudulent nature of  
 7 a fictitious entity are not conclusory merely because they refer to circumstantial  
 8 evidence. *See Albergo*, 2011 WL 6300217, at \*4-5. In addition, the Fund does not  
 9 merely identify Defendants as third parties that are operated by and/or for the benefit  
 10 of the Alter Egos—instead, the Complaint articulates each Defendant’s direct  
 11 relationship to the Alter Egos.  
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13       Defendants also rely on several inapposite cases. [See Mot. Doc. No. 71 at 9;  
 14 Mot. Doc. No. 72 at 10-11]. In *Martinez v. CACH, LLC*, No. 10CV1625 DMS  
 15 (JMA), 2011 WL 2560251, at \*5 (S.D. Cal. June 27, 2011), for instance, the  
 16 complaint was dismissed because—unlike here—the plaintiff did “not identify any  
 17 specific alleged transfers of assets or include allegations regarding the amounts,  
 18 mechanisms, or timing of such transfers.” The court in *Allstate Insurance Company*,  
 19 *v. Countrywide Financial Corporation*, 842 F. Supp. 2d 1216, 1230 (C.D. Cal. 2012),

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20 sufficient detail, that [the transferor entity] fraudulently transferred its entire business  
 21 operation to [defendant] for the purpose of rendering itself judgment-proof’); *Burnett*  
 22 *v. Rowzee*, No. SA CV 07-641 DOC (ANx), 2007 WL 4754539 (C.D. Cal. 2008)  
 23 (holding investors sufficiently pled allegations of fraudulent transfers in a Ponzi  
 24 scheme context).

1 applied Illinois, not California, law and granted a motion to dismiss where—unlike  
2 here—the plaintiff only alleged two badges of fraud which were “consistent both with  
3 liability and with an innocent explanation.” Finally, in *Sunnyside Development*  
4 *Company v. Cambridge Display Technology Limited*, No. C 08-01780 MHP, 2008  
5 WL 4450328, at \*8 (N.D. Cal. Sept. 29, 2008), unlike here, the plaintiff merely  
6 alleged that certain fraudulent transfers were for “all or almost all” of the transferor’s  
7 assets and that they were made for minimal to no consideration.  
8

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10 For these reasons, this Court should deny the Motions.  
11

12 **B. Defendants Are Able To Meaningfully Respond To The Complaint,  
13 And Therefore, Their Requests For Alternative Relief Should Also  
14 Be Denied.**

15 Near the conclusions of the Motions, Defendants hastily seek alternative relief  
16 pursuant to Rules 12(e) and 10(b). [Mot., Doc. No. 71 at 11, 12 n.37; Mot., Doc. No.  
17 72 at 13]. Neither request is appropriate because there is no vagueness or ambiguity  
18 in the Complaint preventing Defendants from meaningfully responding to same.  
19

20 Pursuant to Rule 12(e), “[a] motion for more definite statement is only  
21 appropriate where the allegations are sufficiently unintelligible that a defendant  
22 literally cannot frame a responsive pleading.” *Jones v. Ventura Cnty. Sheriff’s*  
23 *Deputies*, No. CV 13-0062-JAK (DTB), 2013 WL 6018033, at \*2 (C.D. Cal. Nov. 13,  
24 2013) (citations and quotations omitted). “Further, such a motion is not the  
25 appropriate vehicle to elicit additional details of [the Fund’s] claims.” *See id.* (citing  
26 *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 843 (9th Cir. 2000) (Reinhardt, J.,  
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1 concurring) (“[T]o the extent that a complaint lacks detail that the defendants believe  
 2 they need to investigate the claims and prepare their defense strategy, they can obtain  
 3 such detail readily through interrogatories or early depositions.”)).<sup>4</sup>

5 Rule 10(b) sets forth the circumstances under which a party’s claims must be  
 6 set forth in numbered paragraphs. The rule is typically implicated in cases involving  
 7 numerous plaintiffs and defendants.<sup>5</sup> “[The] rule was designed to facilitate the clear  
 8 presentation of the matters set forth, so that allegations might easily be referenced in  
 9 subsequent pleadings . . . [and] as a guideline to ensure that complaints are simple,  
 10 concise, and direct.” *Phillips v. Girdich*, 408 F.3d 124, 128-129 (2d Cir. 2005)  
 11 (citations and quotations omitted). “The ultimate goals are efficiency and fairness . .  
 12 . .” *Rodriguez*, 2010 WL 2943128, at \*3-4 (citation omitted). The pleading should be  
 13 accepted if the violation “does not interfere with one’s ability to understand the claims  
 14 or otherwise prejudice the adverse party . . .” *Philips*, 408 F.3d at 128 (citations  
 15 omitted).

20 <sup>4</sup> At this early stage in the litigation, it would be unreasonable to require the Fund to  
 21 plead additional factual allegations in support of its fraudulent transfer claims. *See*  
*Lee v. Fed. Street LA*, No. 2:14-cv-062640CAS0SS, 2015 WL 179787, at \*5 (C.D.  
 22 Cal. Jan. 12, 2015) (citation omitted). Despite Defendants’ suggestion otherwise, [see  
 23 Mot., Doc. No. 71 at 1], SIP provided no meaningful discovery in the underlying  
 24 breach of contract action resulting in the \$18 million default judgment entered against  
 25 it. In fact, despite the Fund’s repeated requests, SIP did not produce a single  
 26 document in the Fund’s breach-of-contract action. The below-referenced evidence  
 27 was obtained from third parties, such as Wells Fargo and Deutsche Bank.

28 <sup>5</sup> *See generally Bautista*, 216 F.3d at 840-41 (fifty-one plaintiffs); *Bourke v. City of*  
*San Diego*, No. 14-cv-1027-BAS (RBB), 2015 WL 687092, at \*3 (S.D. Cal. Feb. 18,  
 2015); *Rodriguez v. SGLC, Inc.*, No. 2:08-cv-01971-MCE-KJN, 2010 WL 2943128, at  
 \*3-4 (E.D. Cal. July 23, 2010).

1       Here, efficiency and fairness would not be promoted by demanding a more  
 2 specific pleading because the Fund's claims against each Defendant are already set  
 3 forth in separate counts. The Complaint also contains distinct factual allegations  
 4 supporting the claims against each Defendant, segregating the transfers for which each  
 5 Defendant is potentially liable. Finally, as explained below, by virtue of the  
 6 Injunction Motion and the Court's orders granting same, Defendants were provided  
 7 additional notice of the facts supporting the claims asserted against them.

10      **C.     The Court May Take Judicial Notice Of The Injunction Motion And**  
 11      **The Orders Granting Same.**

12      To the extent necessary, in evaluating Defendants' contentions regarding the  
 13 purported inadequacy of the Fund's allegations and Defendants' purported inability to  
 14 meaningfully respond to the Complaint, the Court may consider the Injunction Motion  
 15 and the orders granting same.<sup>6</sup> In particular, the Court may take judicial notice of the  
 16 facts that the Fund submitted voluminous evidence in support of the Injunction  
 17 Motion and that the Court made several findings in support of its holding that the  
 18 Fund demonstrated a likelihood of success on its fraudulent transfer claims against  
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24      <sup>6</sup> See *Albergo*, 2011 WL 6300216, at \*4 (citation omitted) ("[F]ollowing Plaintiff's  
 25 successful motion for preliminary injunctive relief, there is little question that his  
 26 claims are at least 'facially plausible.'"); cf. *Angelotti Chiropractic, Inc. v. Baker*, 791  
 27 F.3d 1075, 1087-88 (9th Cir. 2015) (citations and quotations omitted) ("Although the  
 28 standards for a motion for preliminary injunctive relief and dismissal under Rule  
 12(b)(6) are not coterminous, they overlap where a court determines that the plaintiff  
 has no chance of success on the merits.").

1 Graybox.<sup>7</sup> For example, the Fund filed the following evidence in support of the  
 2 Injunction Motion:

- 4 • the NPA and SIP Notes, [Inj. Mot., Doc. No. 16, Exs. A, B];
- 5 • formation documents, resolutions, and bank records identifying the  
     Alter Egos as SIP's officers and directors, [Inj. Mot., Exs. A, B, C, E,  
     F, K, L, Y];
- 6 • November 2011, December 2011, January 2012, and September 2012  
     summaries for SIP's Wells Fargo and Deutsche Bank accounts, [Inj.  
     Mot., Exs. H-J, O, P];
- 7 • Deutsche Bank records showing distinct wire transfers to Graybox,  
     [Inj. Mot., Exs. Q-X, Z-FF];
- 8 • Deutsche Bank records showing distinct wire transfers to Integrated,  
     [Inj. Mot., Exs. Q, U-W, DD, EE];
- 9 • Deutsche Bank records showing distinct wire transfers to Scher, [Inj.  
     Mot., Exs. U, V];
- 10 • Wells Fargo records showing distinct wire transfers and payments to  
     Graybox, [Inj. Mot., Exs. H, GG, HH]; and
- 11 • Wells Fargo records showing a distinct wire transfer to Scher, [Inj.  
     Mot., Exs. H, GG].<sup>8</sup>

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 16 Although none of these documents show a transfer to Cascade, that omission is  
 17 harmless because: (i) as stated above, the Complaint's well-pled allegations satisfy the  
 18 Fund's pleading burdens; (ii) the "Cascade Transfer" consists of a single \$200,000  
 19 wire transfer from one of SIP's two Deutsche Bank accounts to Cascade, [Compl., ¶¶  
 20 23, 67], making it simple for Cascade to investigate and defend the Fund's actual and  
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 23 <sup>7</sup> See *Gerritsen v. Warner Bros. Entm't Inc.*, No. CV 14-03305 MMM (CWx), 2015  
 24 WL 4069617, at \*12 (C.D. Cal. Jan. 30, 2015) (citations omitted) (citing *NovelPoster*  
 25 *v. Javitch Canfield Group*, No. 13-cv-05186-WHO, 2014 WL 5594969, at \*4 n.7  
 26 (N.D. Cal. Nov. 3, 2014)); accord *TD Ameritrade, Inc. v. The Nev. Agency & Trust*  
 27 *Co.*, No. 3:08-CV-00245-LRH-RAM, 2008 WL 4787138, at \*4-5 (D. Nev. Oct. 30,  
 28 2008) (citations omitted) (taking judicial notice of preliminary injunction and order).

<sup>8</sup> As explained in the Fund's reply in support of the Injunction Motion, the evidence  
     filed by Graybox in opposition to the Injunction Motion actually bolstered the  
     requested asset freeze. [Reply Inj. Mot., Doc. No. 52 at 4-5].

1 constructive fraudulent transfer claims; and (iii) consistent with the Fund's alter-ego  
2 and insider allegations, [Compl., ¶¶ 19-23], each Defendant, including Cascade, likely  
3 has pre-existing knowledge of the Fund's evidence. Finally, with respect to the  
4 Court's badges of fraud and insolvency findings, [see Doc No. 56 at 4-6, 10-12; Doc.  
5 No. 70 at 3], the Court's analysis would be identical for the Fund's actual and  
6 constructive fraudulent transfer claims against the other Defendants (Scher, Cascade,  
7 and Integrated).<sup>9</sup>

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24 <sup>9</sup> See *Palmdale 3D, LLC*, 2015 WL 71561 at \*5 (citation omitted) ("The debtor's  
25 intent is the crucial aspect of a fraudulent conveyance claim"); *In re Llamas*, No. 2:10-  
26 bk-17144-PC, 2011 WL 7637254, at \*6 (C.D. Cal. Dec. 12, 2011) (citations omitted)  
27 ("Conversely, the transferor's intent is immaterial to the constructively fraudulent  
28 transfer in which the issue is equivalence of the consideration coupled with either  
insolvency or inadequacy of remaining capital, or inability to pay debts as they  
mature.").

1           **IV. CONCLUSION.**

2           In sum, before Defendants filed the Motions, they had more than adequate  
3 notice of the facts supporting the Fund's claims. Defendants may have filed the  
4 Motions for an improper purpose,<sup>10</sup> but the Fund simply requests that they be denied,  
5 so that the Fund may proceed to the discovery stage of this litigation.

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9           Dated: November 2, 2015

COLE SCHOTZ P.C.

-and-

PACHULSKI STANG ZIEHL & JONES LLP

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12           By: /s/ Gillian N. Brown

Jeffrey N. Pomerantz

Gillian N. Brown

13           Attorneys for Plaintiff,

14           The Wimbledon Fund, SPC (Class TT)

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<sup>10</sup> Defendants could have filed the Motions at an earlier date in an attempt to facilitate appellate review of both the Injunction Motion and the Motions, *see Munaf v. Geren*, 553 U.S. 674, 691-92 (2008), but instead, Defendants waited until the last day of their requested, extended response deadline to file the Motions, [*see* Stip., Doc. No. 46].

## PROOF OF SERVICE

I, Mary de Leon, am employed in the city and county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067.

On November 2, 2015, I caused to be served the **OPPOSITION TO MOTIONS TO DISMISS FILED BY GRAYBOX, LLC, EUGENE SCHER, AS TRUSTEE OF BERGSTEIN TRUST, AND CASCADE TECHNOLOGIES CORP. [DOC. NO. 71] AND BY INTEGRATED ADMINISTRATION [DOC. NO. 72]; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the parties listed on the attached service list as follows:

- (BY MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY EMAIL) I caused to be served the above-described document by email to the parties indicated on the attached service list at the indicated email address.
- (BY NOTICE OF ELECTRONIC FILING) I caused to be served the above-described document by means of electronic transmission of the Notice of Electronic Filing through the Court's transmission facilities, for parties and/or counsel who are registered ECF Users.
- (BY HAND DELIVERY) I caused to be served the above-described document by hand delivery to the parties as indicated on the attached service list.

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on November 2, 2015, at Los Angeles, California.

/s/ Mary de Leon  
Mary de Leon

1 **SERVICE LIST**  
2

3 **2:15-cv-06633-CAS-AJWx Notice will be sent via CM/ECF to:**

4

- **Anthony R Bisconti**  
5 tbisconti@bmkattorneys.com,admin@bmkattorneys.com
- **Gillian N Brown**  
6 gbrown@pszjlaw.com
- **Steven J Katzman**  
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9 jlevy@coleschotz.com
- **James W Walker**  
10 jwalker@coleschotz.com,ahickey@coleschotz.com,jlevy@coleschotz.

11 **2:15-cv-06633-CAS-AJWx Notice will be sent via hand delivery to:**

12  
13 The Honorable Christina A. Snyder  
14 U.S. District Court  
15 312 North Spring Street  
16 Courtroom 5, 2<sup>nd</sup> Floor  
17 Los Angeles, CA 90012-4701